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7 Attorneys for Defendant UNITED STATES OF AMERICA

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9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION

12 MARK ZWICKER,)	No. C 05-2840 WHA
)	
13 Plaintiff,)	STIPULATION AND [PROPOSED]
)	ORDER APPROVING COMPROMISE
14 v.)	SETTLEMENT
)	
15 UNITED STATES OF AMERICA,)	
)	
16 Defendant.)	
17 _____)	

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STIPULATION AND ~~[PROPOSED]~~ ORDER APPROVING COMPROMISE SETTLEMENT
C 05-2840 WHA

1 IT IS HEREBY STIPULATED by and between Plaintiff Mark Zwicker and Defendant
 2 United States of America, by and through their respective attorneys as follows:

3 1. The parties do hereby agree to settle and compromise the above-entitled action
 4 under the terms and conditions set forth herein.

5 2. Defendant United States of America agrees to pay to Plaintiff Mark Zwicker the
 6 sum of twenty-five thousand Dollars and no cents (\$ 25,000.00),
 7 which sum shall be in full settlement and satisfaction of any and all claims, demands, rights, and
 8 causes of action of whatsoever kind and nature, arising from, and by reason of any and all known
 9 and unknown, foreseen and unforeseen bodily and personal injuries, damage to property and the
 10 consequences thereof, resulting, and to result, from the same subject matter that gave rise to the
 11 above-captioned lawsuit, including any claims for wrongful death, for which Plaintiff or his
 12 heirs, executors, administrators, or assigns, and each of them, now have or may hereafter acquire
 13 against the United States of America, its agencies, agents, servants, and employees.

14 3. Plaintiff and his heirs, executors, administrators or assigns hereby agree to accept
 15 the sum listed in paragraph 2 in full settlement and satisfaction of any and all claims, demands,
 16 rights, and causes of action of whatsoever kind and nature, arising from, and by reason of any and
 17 all known and unknown, foreseen and unforeseen bodily and personal injuries, damage to
 18 property and the consequences thereof which he may have or hereafter acquire against the United
 19 States of America, its agencies, agents, servants and employees on account of the same subject
 20 matter that gave rise to the above-captioned lawsuit, including any future claim for wrongful
 21 death. Plaintiff and his heirs, executors, administrators or assigns further agree to reimburse,
 22 indemnify and hold harmless the United States of America, its agencies, agents, servants or
 23 employees from any and all such causes of action, claims, liens, rights, or subrogated or
 24 contribution interests incident to or resulting from further litigation or the prosecution of claims
 25 by Plaintiff or his heirs, executors, administrators or assigns against any third party or against the
 26 United States, including claims for wrongful death.

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 28 STIPULATION AND ~~[PROPOSED]~~ ORDER APPROVING COMPROMISE SETTLEMENT
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4. This stipulation for compromise settlement shall not constitute an admission of liability or fault on the part of the United States, its agencies, agents, servants, or employees, and is entered into by the parties for the purpose of compromising disputed claims and avoiding the expenses and risks of litigation.

5. This Agreement may be pled as a full and complete defense to any subsequent action or other proceeding involving any person or party which arises out of the claims released and discharged by the Agreement.

6. It is also agreed, by and among the parties, that the settlement amount of twenty five thousand Dollars and no cents (\$ 25,000.00) to Mark Zwicker represents the entire amount of the compromise settlement and that the respective parties will each bear their own costs, fees, and expenses and that any attorneys' fees owed by Plaintiff will be paid out of the settlement amount and not in addition thereto.

7. It is also understood by and among the parties that, pursuant to Title 28, United States Code, Section 2678, attorneys' fees for services rendered in connection with this action shall not exceed 25 percent of the amount of the compromise settlement.

8. Payment of the settlement amount will be made by a check drawn on the United States Postal Service for twenty five thousand Dollars and no cents (\$ 25,000.00) and made payable to Mark Zwicker and the Law Offices of Scott Handleman.

9. In consideration of this Agreement and the payment of the foregoing amount thereunder, Plaintiff agrees that upon notification that the settlement check is ready for delivery, he will deliver to Defendant's counsel a fully executed Notice of Dismissal with prejudice of Mark Zwicker v. United States of America, C 05-2840 WHA. Upon delivery of the Notice of Dismissal, Defendant's counsel will release the settlement check to Plaintiff's counsel or his agent.

10. Plaintiff has been informed that payment may take sixty days or more to process, but Defendant agrees to make good faith efforts to expeditiously process said payment.

STIPULATION AND ~~PROPOSED~~ ORDER APPROVING COMPROMISE SETTLEMENT
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11. The parties agree that should any dispute arise with respect to the implementation of the terms of this Agreement, Plaintiff shall not seek to rescind the Agreement and pursue his original causes of action. Plaintiff's sole remedy in such a dispute is an action to enforce the Agreement in district court. The parties agree that the district court will retain jurisdiction over this matter for the purposes of resolving any dispute alleging a breach of this Agreement.

12. Plaintiff hereby releases and forever discharges the United States and any and all of its past and present officials, employees, agencies, agents, attorneys, their successors and assigns, from any and all obligations, damages, liabilities, actions, causes of action, claims and demands of any kind and nature whatsoever, whether suspected or unsuspected, at law or in equity, known or unknown, arising out of the allegations set forth in Plaintiff's pleadings in this action.

13. The provisions of California Civil Code Section 1542 are set forth below:


"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

Plaintiff having been apprised of the statutory language of Civil Code Section 1542 by his attorneys, and fully understanding the same, nevertheless elects to waive the benefits of any and all rights he may have pursuant to the provision of that statute and any similar provision of federal law. Plaintiff understands that, if the facts concerning Plaintiff's injuries and the liability of the government for damages pertaining thereto are found hereinafter to be other than or different from the facts now believed by them to be true, the Agreement shall be and remain effective notwithstanding such material difference.

14. This instrument shall constitute the entire Agreement between the parties, and it is expressly understood and agreed that the Agreement has been freely and voluntarily entered into by the parties hereto with the advice of counsel, who have explained the legal effect of this Agreement. The parties further acknowledge that no warranties or representations have been made on any subject other than as set forth in this Agreement. This Agreement may not be

1 altered, modified or otherwise changed in any respect except by writing, duly executed by all of
2 the parties or their authorized representatives.

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4 Dated: July 10, 2006


MARK ZWICKER
Plaintiff

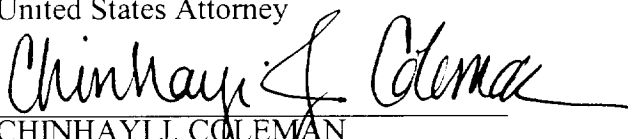
LAW OFFICES OF SCOTT HANDLEMAN

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8 Dated: July 10, 2006


THORSTEN ARTEAGA
SCOTT HANDLEMAN
Attorneys for Plaintiff

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11 Dated: July 10, 2006

KEVIN V. RYAN
United States Attorney

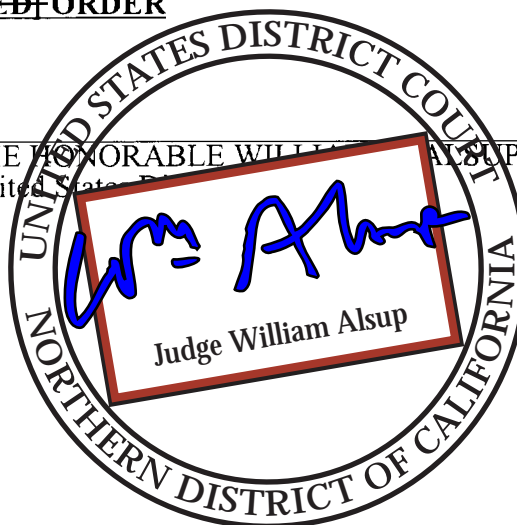

CHINHAYI J. COLEMAN
Assistant United States Attorney

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15 ~~PROPOSED~~ ORDER

16 APPROVED AND SO ORDERED.

17 Dated: 7/17/06

18 THE HONORABLE WILLIAM ALSUP
United States District Judge



STIPULATION AND ~~PROPOSED~~ ORDER APPROVING COMPROMISE SETTLEMENT
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